United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 11, 2001

TO : Curtis A. Wells

Region 15

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Aramark at University of New Orleans

Case 15-CA-16103

This case was submitted for advice as to whether a disciplinary rule maintained by the Employer in its Employee Handbook violates Section 8(a)(1).

The rule at issue subjects employees to discipline if they make "false, vicious or malicious statements concerning any Company or client employee, the Company, or its products." There has been no known enforcement of this rule. The Employer has submitted no business justification for the rule.

We conclude that this rule is unlawfully overbroad because it fails to adequately define the boundaries of permissible conduct and would tend to chill protected activity. It is almost identical to a rule held unlawful in Lafayette Park Hotel, which prohibited employees from making "false, vicious, profane or malicious statements toward or concerning the Lafayette Park Hotel or any of its employees." That rule was held unlawful because it prohibited merely "false" statements, as opposed to maliciously false statements, and was therefore overbroad. The Board specifically held that, even in the absence of any prior enforcement of the rule against union activity or of other unlawful conduct, the rule would have a reasonable tendency to chill protected activity.

¹ The Handbook contains the following other rules that the Region has already determined are unlawfully overbroad: (1) a rule prohibiting employees from discussing workplace or disciplinary problems with each other or with outsiders; (2) a rule prohibiting the distribution of any written material while on UNO's campus; (3) a rule prohibiting "abusive" language; and (4) a rule prohibiting off-duty employees from "[b]eing present on client's premises while not performing authorized services."

² 326 NLRB No. 69 (1998).

Accordingly, the Region should include this rule in its Section 8(a)(1) complaint, absent withdrawal.

B.J.K.